

# **EXHIBIT B**

**ADDENDUM**

**SUPPLEMENTAL PROTOCOLS GOVERNING DEPOSITIONS OF CHINESE  
NATIONALS RESIDING IN MAINLAND CHINA**

**A. Scope**

1. This Addendum shall govern certain aspects of the depositions of Chinese nationals residing in mainland China who agree to be deposed in this litigation on a voluntary basis.

2. This Addendum supplements and incorporates the provisions of the Deposition Protocol, including the COVID-19 Protocols set forth therein, to which it is appended. In the event of a conflict between the Deposition Protocol and this Addendum, the Addendum shall control.

3. This Addendum imposes additional terms upon the Parties based upon laws governing the depositions of Chinese nationals residing in mainland China, including but not limited to the Hague Evidence Convention, China's Civil Procedure Law, China laws pertaining to China state secrets and privacy, and in consideration of certain COVID-19-related restrictions and circumstances.

4. The Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules of the District of New Jersey shall apply to all depositions of Chinese nationals residing in mainland China who agree to be deposed hereunder unless modified herein by the Hague Evidence Convention, China's Civil Procedure Law, or other applicable China law governing the depositions of Chinese nationals residing in mainland China, including China privacy and state secret laws, and other applicable laws of the jurisdiction in which a deposition pursuant to this Addendum is conducted.

5. Nothing in this Addendum shall be construed as a waiver of any witness' or party's defense of lack of personal jurisdiction.

**B. Restrictions Affecting Deposition Location**

6. Plaintiffs may depose Chinese nationals residing in mainland China in mainland China with the approval of a Letter of Request by China's Ministry of Justice; this includes voluntary and involuntary depositions, as well as depositions by videoconference.<sup>1</sup> Plaintiffs have not availed themselves of the Letter of Request process.

7. Chinese nationals traveling from mainland China to another country for a deposition generally require a visa or permit issued by the destination country to enter the destination country; this includes Hong Kong. *See* Immigration Department of the Government of the Hong Kong Special Administrative Region, *Arrangements for Entry to the Hong Kong Special Administrative Region (HKSAR) from the Mainland China*, available at <https://www.immd.gov.hk/eng/services/visas/overseas-chinese-entry-arrangement.html#a>.

8. From time-to-time Chinese nationals residing in mainland China may have to abide by certain intra-China travel restrictions imposed by the China government due to COVID-19.<sup>2</sup>

9. In addition, countries have imposed travel restrictions, including entry bans, on Chinese nationals seeking entry from mainland China due to COVID-19.<sup>3</sup> For example, at the time

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<sup>1</sup> *See* Hague Conference, *The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters*, Mar. 18, 1970, available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=82>; Hague Convention, Table Reflecting Applicability of articles 15, 16, 17, 18, and 23 of the Hague Evidence Convention, May 2014, available at <http://www.hcch.net/upload/appl-table20e.pdf>; Declaration of People's Republic of China, Hague Evidence Convention, available at <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=493&disp=resdn>; Civil Procedure Law of the People's Republic of China, Global China Law, Art. 277, June 29, 2017, available at <http://cicc.court.gov.cn/html/1/219/199/200/644.html>; Bureau of Consular Affairs, China Judicial Assistance, U.S. Dep't of State (last updated May 1, 2019), available at <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html..>

<sup>2</sup> *See* U.S. Embassy & Consulates in China, Covid-19 Information, U.S. Dep't of State (last updated Oct. 16, 2020), available at <https://china.usembassy-china.org.cn/covid-19-information/> (noting "[i]f an area of China has resurgence of cases, local authorities may restrict intercity and interstate travel.").

<sup>3</sup> *See, e.g., Interactive Map of Travel Restrictions*, Kayak (last accessed Oct. 19, 2020), available at <https://www.kayak.com/travel-restrictions>; *U.S. Restrictions*, Centers for Disease Control and Prevention (last

of this Addendum, Chinese nationals traveling from mainland China to Hong Kong are required to quarantine for at least 14 days upon arrival to Hong Kong and for at least 14 days upon return to mainland China.<sup>4</sup>

**C. Protocols Applicable to Depositions Hereunder**

10. **Location:** Unless otherwise agreed, a Chinese national residing in mainland China who agrees to be deposed in this action will travel from mainland China to Hong Kong for the deposition, including for a deposition taken via videoconference.

11. **Witness Costs:** Unless otherwise agreed, Plaintiffs shall share the reasonable cost of the witness' travel between mainland China and Hong Kong, meals, and lodging, as selected by the witness, for the deposition.

12. **Length:** Unless otherwise agreed, a deposition taken pursuant to this Addendum will begin at 9:00 am Hong Kong Standard Time and will last for seven (7) hours, as provided for under the Federal Rules of Civil Procedure. The length of a deposition subject to this Addendum that utilizes translation services may be increased by 50%. The length of a deposition subject to this Addendum may be increased due to delays caused by technical problems resulting from videoconference connectivity interruptions by the amount of time of such delays, which shall be recorded by the stenographer and videographer. In the event translation services and/or technical problems cause the deposition to extend past 6:00 p.m., the witness or examining counsel may elect to extend the deposition to a second consecutive day.

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accessed Oct. 19, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html> (noting ban on Chinese nationals from entering the United States).

<sup>4</sup> See U.S. Consulate General Hong Kong & Macau, COVID-19 Information, U.S. Dep't of State (last updated Oct. 19, 2020), available at <https://hk.usconsulate.gov/covid-19-information/>.

13. **Number of Depositions:** Given the restrictions and burden of travel between mainland China and Hong Kong, a witness being deposed hereunder may only be deposed once. Where a witness noticed to be deposed in their individual capacity is also designated as a 30(b)(6) witness on a 30(b)(6) topic(s), the testimony on the 30(b)(6) topic(s) shall be completed and then the individual testimony shall commence. If the witness' testimony in both capacities cannot be completed in seven (7) hours, the individual testimony should be completed on the next consecutive day. It is explicitly understood that no witness agreeing to be deposed hereunder agrees to travel to Hong Kong a second time for additional deposition testimony.

14. **Notice:** After counsel, through consultation in accordance with this Addendum, have made good faith efforts to agree upon a date and mutually convenient location for the deposition(s), the Noticing Party shall serve a Notice or an amended Notice reflecting the agreed upon date(s), location(s), and start time(s) based on Hong Kong Standard Time. The Parties acknowledge that sufficient notice is necessary so the witness and all other attendees, including counsel, translators, and stenographers/videographers may make the necessary travel arrangements and obtain the necessary travel documentation.

15. **COVID-19 Travel Restrictions:** A deposition noticed hereunder will not be conducted until all pertinent travel restrictions, including quarantine requirements, have been lifted, such that a witness will not be required to quarantine upon arrival in Hong Kong or upon return to mainland China, or due to intra-China travel required to travel between mainland China and Hong Kong, and the Parties agree to reschedule a deposition noticed hereunder accordingly. Counsel are expected to cooperate and coordinate the scheduling of depositions hereunder on a good faith basis.

16. **Objections:** Nothing in this Addendum shall be construed as prohibiting a Party to object to a Notice, including, but not limited to, objecting on the basis of lack of jurisdiction over the witness, violation of the laws of the country in which the proposed deponent resides, or undue burden upon the witness, his/her counsel, or other Parties, or harassment. Counsel shall also be permitted to state objections and, if necessary, instruct a witness not to answer as required under controlling China law, such as due to state secrets or privacy.

17. **Attendance:** In addition to the individuals set forth in the Deposition Protocol (*see* Deposition Protocol, § F.1), a deposition pursuant to this Addendum may be attended by counsel from China for the purpose of ensuring adherence to pertinent China law, such as China state secret and privacy laws.

18. **Disparagement:** Counsel shall refrain from any disparaging or demeaning comments regarding the Chinese government, Chinese heritage, culture, or traditions, and a witness' fluency in English.

19. **Exhibits:** Because exhibits containing foreign languages (i.e., non-English language content) will need to be translated for depositions subject to this Addendum, no less than 30 days in advance of the deposition, at the deposing party's expense, all exhibits must be sent to counsel for the deponent along with certified human translations of any exhibits containing foreign languages. These certified human translations must be provided in two electronic formats: (1) PDF format and (2) an editable text format (e.g., Microsoft Word or Excel). Counsel representing a deponent may object to any translations and, at the deponent's expense, provide proposed corrections to translations or may provide their own alternative certified human translations no less than 14 days in advance of the deposition. Counsel for the parties must work cooperatively to agree on the translated versions of the exhibits to be provided to the deponent no less than 5 days

in advance of the deposition. Counsel for the deponent may raise with the Court any unresolved objections.